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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/894,399	06/28/2001	Chakkalamattam J. Paul	AUS920010380US1	6428
35525	7590	04/12/2011		
IBM CORP (YA) C/O YEE & ASSOCIATES PC P.O. BOX 802333 DALLAS, TX 75380			EXAMINER TANG, KAREN C	
			ART UNIT 2447	PAPER NUMBER
			NOTIFICATION DATE 04/12/2011	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

[ptonotifs@yeciipaw.com](mailto:ptonotifs@yeciipaw.com)

**Office Action Summary****Application No.**

09/894,399

**Applicant(s)**

PAUL ET AL.

**Examiner**

KAREN C. TANG

**Art Unit**

2447

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/C200)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

- Claims 1-11 are presented for examination.

### **DETAILED ACTION**

#### **Response to Arguments**

Applicant's arguments, see pg 2, filed on 9/26/2006, with respect to the rejection(s) of claim(s) 1-11 under U.S.C 103 in view of Sposato, Emens, Grossman, and/or O'Toole have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Preboot Execution Environment (PXE) Specification version 2.1. pages 1-40 hereinafter PXE in view of Fijolek et al hereinafter Fijolek et al hereinafter Fijolek (US 7068597) in further view Bamforth et al hereinafter Bamforth (US 6,330,617)..

#### **Claim Rejections - 35 USC § 101**

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 9-11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In regards to Claims , The claim is drawn to a "computer readable medium". The specification exemplifies the readable medium as indicating transmission or communication medium as carrier wave (see pg 12). Thus, the claim as a whole covers a transitory signal, which does not fall into any of the four categories of invention.

#### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Preboot Execution Environment (PXE) Specification version 2.1, pages 1-40 hereinafter PXE in view of Fijolek et al hereinafter Fijolek et al hereinafter Fijolek (US 7068597) in further view Bamforth et al hereinafter Bamforth (US 6,330,617).

1. Referring to Claim 1, PXE discloses a method at a server for facilitating a remote boot process at a client, wherein the client and the server reside on a network, the method comprising the steps of: receiving, at the server, a dataset of information associated with available boot servers (refer to pg 10); receiving, at the server, a first file transfer request initiated by a remote boot process at the client (refer to pg17); in response to receiving the first file transfer request, sending a file comprising the list of multiple boot server addresses to the client (refer to pg 10).

Although PXE disclosed the invention substantially as claimed, PXE did not explicitly disclosing receiving at the server the load information associated with the boot servers and ordering a list of boot server addresses based on received dataset of load information and based on previously received datasets of load information.

Fijolek, in analogous art, disclosing receiving at the server the load information associated with the boot servers and ordering a list of boot server addresses based on received dataset of load information and based on previously received datasets of load information (the

server performs load-balancing based on the load information received, refer to Col 36, Lines 1-25).

It would have been obvious for one of ordinary skill in the art to combine the teaching of PXE with Fijolek because Fijolek's teaching would prevent the system from being overloading during the power outage situation (as supported by Bamforth, refer to Col 8, Lines 40-67).

2. Referring to Claim 2. PXE, Fijolek, and Bamforth disclosed the method of claim 1, PXE further discloses prior to the step of receiving the first file transfer request: receiving, at the server, a boot service discover message from the client (DHCPDISCOVER, refer to pg 10); and in response to receiving the boot service discover message, sending a boot service acknowledgment message to the client (DHCPACK, refer to pg 12).

3. Referring to Claim 3. PXE, Fijolek, and Bamforth disclosed the method of claim 1, PXE further discloses prior to the step of receiving the first file transfer request: receiving, at the server, a second file transfer request from the client (refer to pg 14); and in response to receiving the second file transfer request, sending an initial network bootstrap program to the client, wherein the initial network bootstrap program, when executed at the client, generates the first file transfer request (refer to pg 14 - 16).

4. Referring to Claims 4-11, claims are rejected under similar rational as claims 1-3.

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is reminded that in amending in response to a rejection of claims, the patentable novelty must be clearly shown in view of the state of the art disclosed by the references cited and the objection made. Applicant must show how the amendments avoid such references and objections. See 37 CFR 1.111(c).

**Examiner's Notes:** Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner. In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

A shortened statutory period for reply to this Office action is set to expire THREE MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREN C. TANG whose telephone number is (571)272-3116. The examiner can normally be reached on M-F 7 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOON H. HWANG can be reached on (571)272-4036. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Karen C Tang/  
Primary Examiner, Art Unit 2447